

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Or-Bach et al.

Title: System and Method for Consolidated Shipping and Receiving Using Reusable Containers

Serial No.: 09/524,060

Filed: 3/13/00

Examiner: Andrew J. Rudy

Art Unit: 6517

Docket: Or-Bach2

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

OFFICE ACTION RESPONSE

In the Office Action dated 6/13/03 the Examiner rejected claims 1-34 as obvious over Mitchell. Applicants respectfully traverse this rejection. Claim 1 recites:

A method comprising:

providing goods in reusable containers, said reusable containers having a radio frequency identification device attached thereto;

establishing a relationship between a radio frequency identification device and a memory;

providing said goods in said containers to customers;

collecting said reusable containers from said customers; and

identifying which customers have returned their reusable containers by electronically querying the radio frequency identification devices attached to the reusable containers.

Thus, one feature of this invention is that goods are provided in reusable containers to customers. The reusable containers are collected from the customers. The customers who have returned their reusable containers are identified by electronically querying a

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radio frequency device attached to the container. Mitchell neither teaches nor suggests this invention.

Mitchell applies RFIDs to containers used within factories. For example, he states:

In many systems and processes, such as in industrial and manufacturing processes, reusable containers are used to transport raw materials or finished goods or objects from an origin station to others, and in order for the personnel running the process to be able to track and effectively utilize such reusable containers some sort of a labeling system is provided.

Mitchell col. 1, lines 7-13. At lines 38-40, Mitchell teaches using the invention "with any suitable process for manufacturing or otherwise treating objects, goods, materials, products or the like." Thus, Mitchell is similar to the Radican reference, already cited and distinguished from the present application. (Radican discusses using RFIDs to monitor the position of containers within a factory. As explained in Applicants' previous amendment, this neither teaches nor suggests the claimed invention. Applicants note that the Examiner has withdrawn the rejection based on Radican. The rejection in light of Mitchell should likewise be withdrawn.)

In order for a reference to render obvious an invention, all claim limitations must be taught or suggest by the reference. MPEP §2143.03. Nowhere does Mitchell teach or suggest applying RFIDs to packages that are sent to customers, nor does Mitchell teach or suggest having the customers return those packages, nor does Mitchell teach or suggest electronically querying the RFIDs to track the return of containers from the customers. Thus, claim 1 patentably distinguishes over Mitchell. The other claims distinguish over Mitchell for similar reasons.

In the last paragraph of Office Action page 2, the Examiner states:

Official Notice is taken that it is common knowledge in the shipping and finance art to collect consumer goods from a plurality of vendors at a central location, place said goods in a reusable container, inform customers when the goods will be available for pick-up, returning reusable containers to a central collection point, provide credit to accounts to customers associated with the re-usable containers, track purchasing habits of consumers and provide discounting shipping costs in return for advertising privileges (sic).

Applicants assume that these remarks are made with reference to the dependent claim 5.

Claim 5 is patentable for at least the reason that it depends on claim 1 which is patentable.

Applicants also respectfully submit that the Examiner's "official notice" violates MPEP §2144.03. The MPEP states that "Official notice unsupported by documentary evidence should only be taken by the Examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." MPEP page 2100-131. The Examiner's allegations of common knowledge do not meet that standard. Further, Applicants respectfully traverse this rejection. Pursuant to MPEP §2144.03(C), Applicants request that the Examiner provide documentary evidence of these allegations or withdraw the rejection.

Applicants' claim 6 recites:

Method of claim 5 wherein said customers return said reusable containers to a central collection point, said method further comprising querying the radio frequency identification devices within said containers when said customers return said containers to said collection point.

Again, Mitchell does not teach or suggest providing reusable containers to customers, having the customers return the reusable containers, or querying the RFIDs when the customers return the containers. Therefore, Mitchell could not possibly render claim 6 unpatentable.

Applicants' claim 19 recites:

Method of claim 1 wherein said reusable containers contain one or more consumer products and are provided to the consumers of said consumer products in said containers.

Again, Mitchell does not teach or suggest that consumer products are shipped to consumers of those products in containers that comprise an RFID. Instead, Mitchell merely uses his RFIDs within the confines of a factory. Therefore, claim 19 distinguishes over Mitchell. Claims 20-24 distinguish over Mitchell for at least this reason as well.

SUBSTANCE OF TELEPHONE INTERVIEW

On August 27, 2003, Applicants' attorney had a telephone interview with the Examiner to explain why Applicants traverse this rejection. During this interview, the undersigned attorney pointed out that the burden is on the Examiner to show where each of the claim limitations are disclosed in the prior art, and that Mitchell does not show numerous limitations of the claims. For example, Mitchell has nothing to do with using RFIDs in conjunction with reusable containers that are shipped to customers, and querying the RFIDs to determine which customers have returned their containers.

CONCLUSION

As claims 1-34 distinguish over Mitchell, Applicants earnestly request that the application be allowed. If the Examiner's next action is other than allowance, the Examiner is respectfully requested to telephone Applicants' attorney at (408) 732-9500 to discuss this matter.

Respectfully submitted,



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Pursuant to rule 37 CFR 1.8, Applicant's attorney hereby certifies that this document is being sent by facsimile to the United States Patent and Trademark Office, FAX number 703-305-7687 on September 14, 2003.



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September 14, 2003

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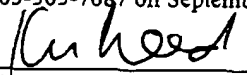
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Pages: 6
Re: U.S. Patent Application Serial No. 09/524,060, filed 3/13/00
Docket No.: Or-Bach2

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PLEASE HAND-CARRY THIS DOCUMENT TO EXAMINER ANDREW J. RUDY IN
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